CALISTER LIONEL

v.

THE GOVERNMENT OF MALAYSIA

HIGH COURT MALAYA, JOHOR BAHRU
SYED OTHMAN J
[CIVIL SUIT NO. 41 OF 1966]
19 JANUARY 1971

ADMINISTRATIVE LAW: *Termination of service - Legality - Plaintiff a clerk attached to Police Department - Termination effected via letter from Chief Police Officer - Whether Chief Police Officer acting outside the scope of his authority - Service terminated upon payment of one month's salary in lieu of notice - Whether amounted to a dismissal - Federal Constitution Article 144(6) - Interpretation and General Clauses Ordinance 1948 s. 28(1)*

This was an application by the plaintiff for a declaration that his dismissal from the Government service was null and void and of no effect on the ground that the dismissing authority had no power to dismiss him. The facts showed that the plaintiff was employed as a clerk in the Police Clerical Service. It was not in dispute that being so employed, the plaintiff was subject to the provisions of the General Orders and to all rules and regulations issued by the Public Service Commission. Pursunat to disciplinary proceedings which had been taken against the plaintiff under reg. 32 of the General Orders Chapter 'D' ('GOD'), and in which he was found guilty of certain acts of indiscipline, the Chief Police Officer ('the CPO') wrote a letter to the plaintiff in which he *inter alia* stated '... I have decided that you have failed to exulpate yourself. I have, therefore decided to terminate your services as a Temporary Clerk with effect from June 1 1962, on payment to you of one month's salary in lieu of notice'. The plaintiff appealed to the Public Service Commission against the decision but the appeal was dismissed. Before the learned Judge herein, the plaintiff alleged that, despite the term used in the CPO's letter, it was in fact an act of dismissal on the part of the CPO. It was further alleged that the CPO, in dismissing the plaintiff, had not acted acted pursuant to any delegated authority, and so had no power to do so.

Held:

[1] On the wordings of the CPO's letter, the decision was a termination and not a dismissal. The plaintiff was given one month's salary plus cost of living expenses, and the termination, hence, was in accordance with para. 4 of the plaintiff's conditions of appointment.

[2] Even if the termination is taken as a dismissal, the CPO clearly had the power to dismiss. In this case, the appeal of the plaintiff to the Public Service Commission against the decision of the CPO was dismissed. On this very fact, the only inference to be drawn is that the Public Service Commission must have delegated to the CPO its power to exercise disciplinary control in respect of the grade of service to which the plaintiff belonged. It is not a necessity that the CPO should indicate in his letter that he was acting by virtue of a delegation of power.

[Application disallowed.]

Legislation referred to:
Federal Constitution, art. 144, Clause 6
Interpretation and General Clauses Ordinance 1948, s. 28(1)
Public Authorities Protection Ordinance 1948, s. 2

For the plaintiff - Wong Kim Fatt (R.K. Nathan with him)
For the defendant - Mohd Noor Ahmad, FC

JUDGMENT

Syed Othman J:

The plaintiff seeks a declaration in substance that his dismissal from the Police Clerical Service as a temporary Clerk-Interpreter by the Ketua Pegawai Police, Johore on the first day of June 1962, was of no effect, and that he is still a member of the said Police Clerical Service, and other consequential orders.

The undisputed facts are these. On 1 October 1953 the plaintiff was appointed as a temporary clerk-interpreter in the Police Clerical Service and was attached to Kelantan Police Contingent. In 1958 he was transferred to Contingent Police Headquarters, Johore Bahru. He was subject to the provisions of the General Orders and to all rules and regulations issued by the Public Services Commission at all times during his appointment. On 30 April 1962, disciplinary action under reg. 32 of the General Orders Chapter 'D' (which I shall refer to as GOD) was taken against him by the Chief Police Officer, Johore for acts of indiscipline. Such disciplinary action, the plaintiff was informed, might lead to his dismissal. The letter listed acts of indiscipline and required the plaintiff to exculpate himself in writing within 14 days of the receipt of the letter. The plaintiff on 8 May 1962, addressed a written exculpation to the Chief Police Officer. The Chief Police Officer then on 29 May 1962 sent to him the following letter:

> With reference to my letter to your (SR) PF/3596 dated 30 April 1962, and to your reply thereto dated 8 May 1962, I have to inform you that, after careful consideration of your representation, I have decided that you have failed to exculpate yourself.
>
> 2. I have, therefore, decided to terminate your services as a Temporary Clerk with effect from 1 June 1962, on payment to you of one month's salary plus cost of living allowance in lieu of notice.
>
> Sgd:
> T.B. VOICE,
> Ketua Pegawai Police,
> Johore, Johore Bahru.

The plaintiff appealed to the Public Services Commission Kuala Lumpur against the decision of the Chief Police Officer on 10 June 1962. The appeal was dismissed.

The defence, as a preliminary point, has submitted that as the acts complained of were done by the Chief Police Officer Johore in execution of his public duty, and the action was not commenced before the expiration of twelve months from the date on which the alleged acts complained of occurred, it was barred by s. 2 of the Public Authorities Protection Ordinance 1948.

I do not think that I should deal with this point, as the statement of claim contains an allegation to the effect that what was done by the Chief Police Officer was outside the scope of his authority. For the purpose of this action I need only determine whether the action of the Chief Police Officer was a termination of service or a dismissal and, if it was a dismissal, whether he had the authority.

The main point in dispute is the letter of the Chief Police Officer in which he says that he had decided to terminate the services of the plaintiff. For the plaintiff it is argued that despite the term that was used, it was an act of dismissal as it was done in consequence of disciplinary proceedings. For the defence it is contended that it was a termination of service in accordance with the terms of employment notwithstanding the fact that the Chief Police Officer had expressed in the letter that he was not satisfied with the explanation of the plaintiff.

The offer of appointment made to the plaintiff by the Chief Police Officer, Kelantan contains the following paragraph which is relevant for the purpose of this section:

3. Appointment would be subject to the following conditions:

4th - That your engagement will be terminated at one month's notice, or on payment of one month's salary in lieu of notice on either side, provided that, if your services are dispensed with on ground of unfitness certified by a medical board, no notice shall be required;

The plaintiff accepted the offer of appointment.

The letter initiating proceedings against him charged him with offences against discipline. They fell under two headings: first, conduct bringing the public service into disrepute which contained four offences; and secondly, insubordination to his immediate superior on two occasions specified in the charge.

On the wording of the Chief Police Officer's letter of 29 May 1962, I am satisfied that the decision was a termination and not a dismissal. If it was a dismissal in accordance with GOD 32 the plaintiff would not have been entitled to anything. Here he was given one month's salary plus cost of living allowance, a clear indication of termination in accordance with para. 4 of his conditions of appointment. Under this condition there is nothing to prevent his services from being terminated whether or not he had misconducted himself. The plaintiff could have been properly dismissed and should have been dismissed since he failed to exculpate himself. The decision taken by the Chief Police Officer was probably to save him from the ignominy of a dismissal.

If I am wrong here and assuming that the termination should be taken as a dismissal, the question to be determined is whether the Chief Police Officer had the power to dismiss.

It is argued that the Chief Police Officer had no power to dismiss under the conditions of the appointment as the letter was written by the Chief Police Officer acting at his own instance and not by virtue of any delegation of power. Reference is made to GOD 31 which reads:

31. In these Regulations the 'Disciplinary Authority' means in relation to any officer the Commission whose jurisdiction extends to the service of which such officer is a member in accordance with the provision of part X of the Constitution.

Provided that where such Commission in pursuance of Clause (6) of Article 144 of the constitution has delegated the exercise of disciplinary control in respect of any grade of service to an officer or board of officers any reference to the Disciplinary Authority shall in relation to an officer within that grade of service be construed as referring to the officer or board of officers to whom such function has been delegated.

On the face of it, the above provision does not appear to relate to appendix GOD 31. But List A in the appendix bears the heading reg. 31, i.e., GOD 31. It is said for the plaintiff that the list bears the name of Federal Officers to whom the Public Services Commission has delegated its power under Clause (6) of Article 144 of the Constitution. (The Commissioner of Police is in the list, but not the Chief Police Officer, Johore) I have some doubt if this was so as a delegation of power under Clause (6) of Article 144 is a matter for the Public Services Commission and not to be prescribed under the General Orders. It seems to me that this provision is a vestige of the procedure from pre-Merdeka era. I believe the procedure has now been changed by some new regulations.

As to GOD 31 I must confess I am unable to ascertain what is intended by the operative part as the sentence does not appear to be complete. But the proviso gives me some light. Its effect is that the Commission has in pursuance of Clause (6) of Article 144 of the Constitution delegated the exercise of disciplinary control to an officer or board of officers,

Clause (6) of Article 144 of the Constitution reads:

> 144. (6) A Commission to which this part applies may delegate to any officer in a service to which its jurisdiction extends, or to any board of such officers appointed by it, any of its functions under Clause (I) in respect of any grade of service, and that officer or board shall exercise those functions under the direction and the control of the Commission

By s. 28(1) of the Interpretation and General Clauses Ordinance, 1948, which is applicable to the constitution (see the Eleventh Schedule to the Constitution) where a written law confers a power or imposes a duty, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed from time to time as occasion requires. The Public Services Commission has power under Clause (6) to delegate its duty under Clause (1) which includes the exercise of disciplinary control over members of the service to which its jurisdiction extends. That power may therefore be delegated to any officer at any time. Even if it can be said that the list in appendix GOD 31 bears the name of officers to whom the Public Services Commission has delegated its power, that list cannot be taken as exhaustive or derogating the powers of the Public Services Commission to delegate its power of the officers. In this case, it is a fact that the appeal of the plaintiff to the Public Services Commission against the decision of the Chief Police Officer was dismissed. On this very fact, the only inference to be drawn is that the Public Services Commission must have delegated to the Chief Police Officer its power to exercise disciplinary control in respect of the grade of service to which the plaintiff belonged. I do not think it is necessary that the Chief Police Officer should have indicated in his letter that he was acting by virtue of a delegation of power. The dismissal of the appeal by the Public Services Commission indicates that it was exercising direction and control over the Chief Police Officer in performing the functions which had been delegated to him, within the terms of Clause (6) of Article 144 of the Constitution. That in dealing with the plaintiff, the Chief Police Officer had been under its control and direction through the usual channel of Police Headquarters, is clearly indicated in the letter P4 addressed to him by the Senior Assistant Commissioner at Kuala Lumpur, and which related to a discussion with an officer of the Public Services Commission who dealt with disciplinary matters.

On the foregoing grounds, I do not consider that the plaintiff has made out a case for the exercise of my discretion to make the declaration and other orders which he seeks. The application is dismissed with costs.

Also found at [1983] 1 CLJ 99